

Agricultural Marketing Service, USDA

§ 205.681

promptly report such data to the Federal health agency whose regulatory tolerance or action level has been exceeded. Test results that exceed federal regulatory tolerances must also be reported to the appropriate State health agency or foreign equivalent.

[77 FR 67251, Nov. 9, 2012]

§ 205.671 Exclusion from organic sale.

When residue testing detects prohibited substances at levels that are greater than 5 percent of the Environmental Protection Agency's tolerance for the specific residue detected or unavoidable residual environmental contamination, the agricultural product must not be sold, labeled, or represented as organically produced. The Administrator, the applicable State organic program's governing State official, or the certifying agent may conduct an investigation of the certified operation to determine the cause of the prohibited substance.

§ 205.672 Emergency pest or disease treatment.

When a prohibited substance is applied to a certified operation due to a Federal or State emergency pest or disease treatment program and the certified operation otherwise meets the requirements of this part, the certification status of the operation shall not be affected as a result of the application of the prohibited substance: *Provided, That*:

(a) Any harvested crop or plant part to be harvested that has contact with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program cannot be sold, labeled, or represented as organically produced; and

(b) Any livestock that are treated with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program or product derived from such treated livestock cannot be sold, labeled, or represented as organically produced: *Except, That*:

(1) Milk or milk products may be sold, labeled, or represented as organically produced beginning 12 months following the last date that the dairy animal was treated with the prohibited substance; and

(2) The offspring of gestating mammalian breeder stock treated with a prohibited substance may be considered organic: *Provided, That*, the breeder stock was not in the last third of gestation on the date that the breeder stock was treated with the prohibited substance.

§§ 205.673–205.679 [Reserved]

ADVERSE ACTION APPEAL PROCESS

§ 205.680 General.

(a) Persons subject to the Act who believe they are adversely affected by a noncompliance decision of the National Organic Program's Program Manager may appeal such decision to the Administrator.

(b) Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of a State organic program may appeal such decision to the State organic program's governing State official who will initiate handling of the appeal pursuant to appeal procedures approved by the Secretary.

(c) Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of a certifying agent may appeal such decision to the Administrator, *Except, That*, when the person is subject to an approved State organic program, the appeal must be made to the State organic program.

(d) All written communications between parties involved in appeal proceedings must be sent to the recipient's place of business by a delivery service which provides dated return receipts.

(e) All appeals shall be reviewed, heard, and decided by persons not involved with the decision being appealed.

§ 205.681 Appeals.

(a) *Certification appeals.* An applicant for certification may appeal a certifying agent's notice of denial of certification, and a certified operation may appeal a certifying agent's notification of proposed suspension or revocation of